IN THE MICHIGAN SUPREME COURT

Appeal from the Michigan Court of Appeals
BOONSTRA, P.J., and TUKEL and LETICA, JJ.

In re Orta, Minors.

Lisa Keeney,

Petitioner-Appellant,

v

Maria Orta,

Respondent-Appellee.

Supreme Court No. 161118; 161119

Court of Appeals Nos. 346399; 346400

Delta Probate Court
LC No. 15-021724-GM; 15-021725-GM

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RESPONDENT-APPELLEE'S BRIEF IN RESPONSE TO PETITIONER-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

Filed under AO 2019-6

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INTRODUCTION

This Court should deny the Appellant's Application for Leave to Appeal because the Court of Appeals correctly determined that the trial court erred in entering initial order of guardianship.

Contrary to the Appellant's assertion, the Court of Appeals correctly determined that Ms. Orta could challenge the initial order of guardianship. The initial order was a non-final order issued as part of a continuous guardianship proceeding. As such, the Court of Appeals properly ruled that Ms. Orta's challenge was not a collateral attack.

The Court of Appeals also correctly determined that the trial court erred in granting the initial order of guardianship where all parties only intended for the children to temporarily stay with their grandmother. Since the original agreement between the parties involved a temporary living arrangement for the children, the children did not "reside" with the grandmother as was required under MCL 700.5204(2)(b). Therefore, the Court of Appeals correctly held that the statutory requirements for a guardianship in MCL 700.5204(2)(b) had not been satisfied.

Because the Court of Appeals unanimously reached the right result, this Court should deny the Application for Leave to Appeal.

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Court of Appeals correctly determined that Ms. Orta could challenge of the order of guardianship since the appeal was not a collateral attack but instead a challenge to an initial non-final order part of a continuous guardianship proceeding?

   The Appellee answers yes.
   The Trial Court did not answer this question.
   The Court of Appeals answered yes.
   The Appellant answers no.

2. Whether the Court of Appeals correctly determined that the trial court erred in granting the guardianship when all parties only intended for the children to temporarily stay with their grandmother?

   The Appellee answers yes.
   The Trial Court did not answer this question.
   The Court of Appeals answered yes.
   The Appellant answers no.

COUNTER-STATEMENT OF FACTS

In June 2015, Maria Orta dropped her two children, Leilani (age 4) and Marques (age 2), off for summer vacation at their maternal grandmother's house while she saved money to buy an apartment. 9/25/18 Tr. at 29. With her, Ms. Orta brought enough supplies – toiletries, diapers and wipes, clothes, toys, and books – to last a month. 10/15/15 Tr. at 18. Although Ms. Orta offered to provide financial assistance, the maternal grandmother, Lisa Keeney, refused the offer. *Id.* at 19. Ms. Orta also left a signed note with her mother, stating, "I, Maria Orta, am giving my mother Lisa Keeney permission to consent for treatment being emergency or general care, of my two children" as well as her contact number. Mother's Consent Letter dated 6/19/15 at 1. Ms. Orta and Mrs. Keeney both agreed to this one-month arrangement. *In re Orta*, unpublished decision of the Court of Appeals dated February 4, 2020 (Docket Nos., 346399, 346400). Others, including Ms. Orta's employer and Ms. Orta's childhood friend Melissa McLean, corroborated that the arrangement was intended to be temporary. Letter from Employer dated 10/14/15 at 1; 9/25/18 Tr. at 74.

While Leilani and Marques visited their grandmother, Ms. Orta was working and staying at staff housing at her place of employment, Narconon Freedom Center, an addiction treatment center in Albion,

Michigan. 10/15/15 Tr. at 5. Her employer noted that she was "punctual, dedicated and willing to exceed expectations." Letter from Employer dated 10/14/15 at 1. Although her manager noted that "[t]his has never been a concern Narconon has for her," per Narconon's employee policy, Ms. Orta was subject to weekly drug and alcohol screenings. *Id.* She never tested positive for either. *Id.*

After a month, Ms. Orta and Mrs. Keeney had a phone conversation about their temporary arrangement. 10/15/15 Tr. at 19. According to Ms. Orta, the "kids were happy," Mrs. Keeney "didn't mind helping out," and Ms. Orta was still working towards financial security. *Id.* As a result, Mrs. Keeney and Ms. Orta agreed that Leilani and Marques would stay with their grandmother just until Ms. Orta "was able to get into [her] apartment." *Id.*

Despite this agreement and unbeknownst to Ms. Orta, soon thereafter Mrs. Keeney filed a guardianship petition. Petition for Appointment of Guardian dated 9/11/15. Even though Ms. Orta had driven the seven hours to visit her children over Labor Day weekend just days before the petition's filing, Mrs. Keeney never mentioned this information to Ms. Orta. 10/15/15 Tr. at 20; *In re Orta*, unpub op at 2. And despite having her daughter's phone number, Mrs. Keeney never contacted or even attempted to contact Ms. Orta about the guardianship. 9/26/18 Tr. at 36-37.

On the same day the petition was filed, the trial court immediately granted Mrs. Keeney a temporary guardianship. *In re Orta*, unpub op at 2. The court also ordered that parenting time would be entirely at Mrs. Keeney's discretion. 10/15/15 Tr. at 65. The temporary guardianship was set to expire on October 9, 2015, but was extended to October 15, 2015. *In re Orta*, unpub op at 2.

At the beginning of October, Ms. Orta attended a funeral in Bath, Michigan. 10/15/15 Tr. at 45. Mrs. Keeney and her husband, Mike Keeney, also attended with Leilani and Marques. *Id.* at 45-46. When the funeral was over, Ms. Orta told her mother and stepfather that she wanted to spend some time with her children and that she would bring them back later in the day. *Id.* Though Mr. and Mrs. Keeney had applied for guardianship three weeks before, they still had not notified Ms. Orta about the guardianship, or that they had already obtained a temporary guardianship order from the trial court. *Id.* at 59-60. Ms. Orta did not know about the guardianship case because Mrs. Keeney's attorney's office had not properly served Ms. Orta with the notice of temporary guardianship. *In re Orta*, unpub op at 3.

After the funeral, when Mr. and Mrs. Keeney informed Ms. Orta for the first time that they had temporary guardianship over her children, Ms. Orta called the police. 10/15/15 Tr. at 46. After the police arrived and instructed Ms. Orta about the guardianship process, she

asked to spend some time with her children before they had to leave. *Id.* at 46-47. After she spent time with her children, Mrs. Keeney wanted to "get back to the hotel to let the kids play. So they get this out of their mind." *Id.* at 47. Thereafter, Ms. Orta was re-served with the guardianship papers. *In re Orta*, unpub op at 3.

Two weeks later, Ms. Orta appeared at the guardianship hearing without an attorney. 10/15/15 Tr. at 3. There, she explained to the court that she had already signed a one-year lease for a two-bedroom apartment, had consistently worked at Narconon, and had recently received a promotion and a pay increase. *Id.* at 4-6, 30. She was also financially stable and had access to reliable transportation through work. *Id.* at 20, 30. Ms. Orta also explained the temporary nature of the arrangement she had made for her children with her mother and clarified that she had kept in touch with her mother after the original one month had passed. *Id.* at 19.

Still, the court opted to grant Mrs. Keeney guardianship of Ms. Orta's children, noting that Mrs. Keeney was financially "in a better position. . . than the mother has been." *Id.* at 63. The court noted that it wished to see "a longer pattern of stability in the workplace and living arrangement" before returning Leilani and Marques home while incorrectly stating that Ms. Orta had only been employed for "a couple of weeks." *Id.* at 63, 65. The court order left parenting time at Mrs.

Keeney's discretion and directed DHHS to assist Ms. Orta with reasonable visits and phone calls. *In re Orta*, unpub op at 3. However, there is no evidence that DHHS did anything to assist Ms. Orta with visits and phone calls. *Id.*

The court further noted that Ms. Orta "has indicated she is not an attorney, but the Court feels she has basically made all of the important points that she could in this matter." 10/15/15 Tr. at 61. Ms. Orta remained unrepresented until the most recent petition to terminate the guardianship was filed.

Additionally, the court never told Ms. Orta that she could appeal the guardianship decision; instead, the court noted that "the idea of a guardianship . . . is that they not last forever" and that "we'll come back into court sometime in the future and we will review this matter in a year." *Id.* at 66, 71. Nor did the court mention that if Ms. Orta did not appeal the decision immediately, she would forever lose the right to challenge it. In all respects, the court conveyed to her that it was a temporary order that could be modified.

Over the next year, Ms. Orta worked towards her goal: creating a stable and secure home and life for her children. In September of 2016, she purchased a manufactured home. 12/21/16 Tr. at 6. According to the CPS worker who did a home study, Ms. Orta's home was "satisfactory for children to live in." *Id.* at 55. In March of 2016,

Ms. Orta began working full-time at Canton Petroleum, a local convenience store within walking distance of her home. *Id.* at 5-6, 25. Though Leilani and Marques were still staying with their grandparents, Ms. Orta called the administration at her local elementary school, Walker Elementary, to determine the enrollment procedure. *Id.* at 24. She had also conducted research to determine that the school bus would pick up and drop off her children two streets away on a daily basis. *Id*. Additionally, Ms. Orta had determined that her children would see doctors at Beaumont Hospital and had gone to the hospital herself. *Id.* at 26.

During this time, Ms. Orta did not have reliable access to transportation and therefore, struggled to regularly travel the six to eight hours to visit her children. *Id.* at 24-25. Ms. Orta saw her children three times when Mr. and Mrs. Keeney traveled downstate. *Id.* at 46. Although Mr. and Mrs. Keeney travelled downstate on two other occasions, Mrs. Keeney insisted that Ms. Orta schedule time to see her children through other individuals – such as Ms. Orta's father – and refused to work with Ms. Orta directly. *Id.* at 7-8. This ultimately resulted in Ms. Orta being unable to visit her children. *Id.* Each time Mr. and Mrs. Keeney were in town, Ms. Orta would beg her mother for additional time with the children. In response, her mother told her to "quit asking." *Id.* at 31. According to Mrs. Keeney, the

reason Mr. and Mrs. Keeney refused to let Leilani or Marques see their mother unsupervised was because Mrs. Keeney didn't know where Ms. Orta was living. *Id*. However, Mrs. Keeney also refused to ask Ms. Orta where she lived because, according to her, "I don't care anymore" and stated that Ms. Orta "is no longer my daughter." *Id.* at 27, 31. And since Mrs. Keeney refused to inform Ms. Orta about Leilani's school functions, Ms. Orta was never able to attend any of these functions. *Id.* at 15-16.

Ms. Orta regularly called her children to speak with them. *Id.* at 54. Though Marques was younger and therefore less interested in talking on the phone, he "repeatedly ask[ed] [his mother] when he gets to come home." *Id.* at 8. Leilani, on the other hand, would talk to her mom "for long periods of time." *Id.* at 48. On one occasion, when Ms. Orta was discussing healthy and age-appropriate boundaries with Leilani, Mrs. Keeney abruptly hung up the phone because she deemed the conversation to be inappropriate. *Id.* at 28-29. Furthermore, while Mr. and Mrs. Keeney refused to answer the children's questions about court or the guardianship, Ms. Orta always attempted "to be honest with them as to what [wa]s going on" and to answer their questions about "why they're not with [their mother]." *Id.* at 22, 48-49.

Ms. Orta also attempted to contact Leilani's school whenever she had concerns about Leilani's safety. *Id.* at 15. For example, on one

occasion, when Ms. Orta had been told that Leilani was leaving school grounds with strangers, she called Leilani's principal to express concern. *Id.* After looking into the incident in question, the principal noted that Leilani was safe and that Ms. Orta had received incorrect information. *Id.* at 53. Further, though Ms. Orta attempted to speak with Leilani's teachers to talk about her academic progress, the principal said that the teachers would not be able to speak with her because of the guardianship order. *Id.* at 22.

In December of 2016, fourteen months after the initial guardianship hearing, Ms. Orta filed a petition to terminate the guardianship and to bring her children home. The court held a hearing on the petition on December 21, 2016, at which the court noted that Ms. Orta's "life ha[d] improved," that she "loves her children," and that she was "doing better and making improvements." *Id.* at 62, 64. The court also admitted that Ms. Orta "had stable employment for many months and own[ed] her own mobile home." *Id.* at 63. Despite these accomplishments, the court held that it would "certainly not be in [the children's] best interest . . . to terminate the guardianship . . . and pull them out of the school" because Mr. and Mrs. Keeney's home was "more stable comparing the two." *Id.* at 64.

Although the court was "impressed with what [she] ha[d] done so far," Ms. Orta needed to, "amongst other things. . . get the child

support stuff going." *Id.* at 65. Ms. Orta admitted that she had been inconsistent with her child support payments – paying approximately $725 rather than $4200 – because her top priority had been providing and maintaining a stable home for her children. *Id.* at 14, 62. She explained that the "guardianship was established . . . because of my lack of stability" and, in order to prove to the court that she had stable and consistent housing, she purchased a "stable home for [her] children to return home to." *Id.* at 14. Despite Ms. Orta's improvements, since there was "no good and sufficient reason why she is so far in arrearage" and since Mr. and Mrs. Keeney's home "is the more stable comparing the two," the court upheld the guardianship and denied the petition to terminate. *Id.* at 62. Again, Ms. Orta was unrepresented at the hearing.

Over the next year and a half, Ms. Orta continued to maintain and improve her financial and housing stability. She maintained her home and purchased a car in order to have more reliable transportation. 9/25/18 Tr. at 39. And after she was assaulted in February of 2018, she took proactive steps to ensure her safety by calling the police and receiving a two-year personal protection order. *Id.* at 62-63. Ms. Orta also began seeing a therapist regularly. *Id.* at 56.

Ms. Orta also made significant strides professionally. While working at the convenience store, Ms. Orta was repeatedly approached and recruited by the manager of Meijer Central Fill, a local pharmacy. 9/19/18 Letter from Employer at 1. After Ms. Orta began working at Meijer Central Fill, she earned her state license as a pharmacy technician. 9/25/18 Tr. at 34. Ms. Orta's manager noted that Ms. Orta was "always reliable and always willing to work extra," which had earned her a permanent position. Letter from Employer dated 9/19/18 at 1. Though Ms. Orta discussed transferring to the Meijer in Escanaba to be closer to her children, she decided that the extensive support of her extended family downstate and the higher pay she received at Meijer Central Fill would lead to more long-term stability for Leilani and Marques. 9/25/18 Tr. at 48-49, 55, 88; 12/21/16 Tr. at 8. She also feared that the court would view moving as a sign of instability, especially because the court had previously highlighted Ms. Orta's prior history of unstable housing as a key consideration when continuing the guardianship with her mother. 9/25/18 Tr. at 55-56.

During this time, Ms. Orta tried to call her children at least every other day. *Id.* at 31. Yet despite these regular calls, she was frequently denied access to her children because Mrs. Keeney refused to answer the phone for weeks at a time. *Id.* at 60. Although Ms. Orta requested to visit in October of 2017, Mrs. Keeney said they were "very

busy" and refused Ms. Orta's request. 9/26/18 Tr. at 9. Since Mr. and Mrs. Keeney only made one trip downstate during the entirety of 2017, Ms. Orta was only able to see her children once during that time. *Id.* at 7-8. Still, even when Ms. Orta was unable to see her children, she sent clothes and birthday presents to them. 9/25/18 Tr. at 58. Then, in June of 2018, Ms. Orta traveled upstate to visit her children. 9/26/18 Tr. at 8. Ms. Orta arranged for them to stay at a hotel and play at the hotel pool, go to the Children's Museum, and go out to eat. *Id.* at 11.

After hiring a lawyer to help with her case, Ms. Orta filed a second petition to terminate the guardianship in July 2018. 9/25/18 Tr. at 1; Petition to Terminate Guardianship Leilani dated 7/12/18; Petition to Terminate Guardianship Marques dated 7/12/18. Even though the court was statutorily mandated to annually review the guardianships because the children were under the age of six, the trial court had twice continued the guardianship without a hearing. *In re Orta*, unpub op at 4; MCL 700.5207(1). Despite testimony to the contrary over the course of a two-day trial, the court wrote that Ms. Orta had "failed or neglected to provide regular and substantial support for her two children for two or more years" and "failed to substantially comply with the court's support order for more than two years." Trial Court Opinion on Petition to Terminate Guardianship dated 10/25/18 at 10. Further, since the court found that Ms. Orta,

"having the ability to visit, contact, or communicate with her two children ha[d] substantially failed or neglected without good cause to do so for more than two years," the court denied Ms. Orta's petition to terminate guardianship. *Id.*

Ms. Orta appealed the decision to the Court of Appeals. In a unanimous decision, the Court of Appeals reversed the trial court's decision "[b]ecause the trial court improperly exercised its jurisdiction." *In re Orta*, unpub op at 1. Since the original agreement between Ms. Orta and her mother involved a temporary living arrangement for Leilani and Marques and thus the children did not "reside" in Mrs. Keeney's home, the Court of Appeals held that the guardianship requirements set out in MCL 700.5204(2)(b) had not been satisfied. Therefore, it vacated the order of guardianship.

On the day the court issued the decision, Ms. Orta filed an ex parte petition to terminate Mrs. Keeney's guardianship. Ex Parte Motion dated 2/4/20. The trial court granted the request and returned Leilani and Marques to their mother's care the next day. Order dated 2/5/20.

On March 16, 2020, Mrs. Keeney filed an Application for Leave to Appeal with this Court. Application for Leave to Appeal dated 3/16/20.

ARGUMENT

I. The Court Of Appeals Correctly Held That Ms. Orta Had A Right To Challenge The Initial Guardianship Order Since It Was The First Phase In A Continuous Proceeding

Standard of Review

Whether a party has a right to challenge the trial court's order is an issue of law that this Court can review de novo. *In re Ferranti*, 504 Mich 1; 934 NW2d 610 (2019).

Argument

The Court of Appeals correctly found that Ms. Orta had a right to challenge the initial guardianship order because it was a non-final order in a continuous guardianship proceeding.

Generally speaking, Michigan courts have held that a litigant need not appeal non-final orders by leave to appeal, and instead can wait to challenge interim orders after the trial court has issued a final order in the case. See *Shember v Univ of Michigan Med Ctr*, 280 Mich App 309, 315; 767 NW2d 660 (2009) (overruled on other grounds); *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 499 n1; 730 NW2d 481 (2007). Michigan court rules define a "final order" to be the "first order that disposes of all the claims and adjudicates the rights and liabilities of all the parties." MCR 7.202(6).

In a guardianship proceeding, the initial order granting a guardianship is not a final order. It is simply an initial order that trial

courts subsequently modify, continue, or terminate. MCL 700.5209. Therefore, like Ms. Orta did in this case, it is procedurally appropriate for a litigant in a guardianship case to wait until a court denies a motion to terminate the guardianship to challenge the initial guardianship order.

Here, the trial court made clear to Ms. Orta that the initial order was not a final order, but instead was subject to modification. During the initial guardianship hearing, the court noted that it wished to see "a longer pattern of stability in the workplace and living arrangement" before returning Leilani and Marques home with Ms. Orta. 10/15/15 Tr. at 63, 65. Further, the court told Ms. Orta that "the idea of a guardianship . . . is that they not last forever" and that "we'll come back into court sometime in the future and we will review this matter[.]" *Id.* at 66, 71. The court made clear that the initial order was subject to modification. It was not final.

Moreover, denying parents like Ms. Orta the ability to challenge the initial order of guardianship would raise serious due process concerns. Parents have a fundamental right to direct the care of their children; this right is directly implicated in guardianship cases, which involve the transfer of the parent's constitutional rights to a third party. See *In re Sanders*, 495 Mich 394, 415; 852 NW2d 524 (2014); *Hunter v Hunter*, 484 Mich 247; 771 NW2d 694 (2009). This Court, in

Ferranti, held that parents in child protective proceedings could challenge initial adjudication orders in termination of parental rights appeals. *In re Ferranti*, 504 Mich at 17. In part, this Court reached this conclusion because of the fundamental rights at stake, the fact that parents were not told of their right to appeal the adjudication order, and the fact that parents were not told that they would forever lose their right to appeal the decision if they did not do so immediately. *Id.* at 21. In light of these realities, the Court found that denying parents the right to challenge the initial adjudication order would raise due process concerns. *Id.*

The exact same procedural deficiencies exist in this case, which again involved the deprivation of Ms. Orta's right to parent her children. After the trial court granted the initial guardianship order, it never told Ms. Orta that she could appeal the order, nor did it tell her she would forever lose the right to challenge it. Instead, the court noted that "we'll come back into court sometime in the future and we will review this matter in a year." *Id.* at 66, 71. In all respects, the court conveyed to her that it was a temporary order that could be modified. And Ms. Orta was in an even worse position than the parents in *Ferranti* in that she did not have the assistance of counsel at the initial guardianship hearing, or at many of the hearings thereafter. Based on these procedural deficiencies, and the fact that an initial

guardianship order was not a final order, the Court of Appeals correctly found that Ms. Orta had a right to challenge the initial guardianship order.

II. The Court of Appeals Correctly Held That The Trial Court Erred In Establishing A Guardianship

Standard of Review

This Court reviews issues of statutory interpretation de novo. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

Argument

The Court of Appeals correctly held that the trial court erred in granting Mrs. Keeney a guardianship. According to MCL 700.5204(2)(b), a trial court may only appoint a guardian if all three of the following conditions are met: "[(1)] The parent or parents permit the minor to reside with another person and [(2)] do not provide the other person with legal authority for the minor's care and maintenance, and [(3)] the minor is not residing with his or her parent or parents when the petition is filed." In this case, since Ms. Orta only arranged for the children to temporarily live with, but not reside with, Mrs. Keeney, and since she gave Mrs. Keeney legal authority over the children, the Court of Appeals correctly found that the statute itself barred the trial court from establishing a guardianship.

When interpreting a statute, Michigan courts must first "'focus[] . . . on the statute's plain language.'" *People v Pinkney*, 501 Mich 259, 268; 912 NW2d 535 (2018) (quoting *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014)). When looking at the statute's plain language, courts must assume that the Legislature acted and chose language deliberately and knowledgeably. *Longstreth v Gensel*, 423 Mich 675, 691; 377 NW2d 804 (1985); *Gordon Sel-Way Inc v Spence Bros Inc*, 438 Mich 488, 506; 475 NW2d 704 (1991). Since "the proper role of the judiciary is to interpret and not to write the law," courts are required to look at and defer to the language used by the Legislature. *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Therefore, when the legislature uses a particular word within a statute, the technical and legal meaning of that term is incorporated into the statute and must be utilized. *People v Schaefer*, 473 Mich 418, 436; 703 NW2d 774 (2005).

Michigan courts have repeatedly noted that the word "reside" has a particular, legal definition. See *Kubiak v Steen*, 51 Mich App 408, 413; 215 NW2d 195 (1974); *People v Dowdy*, 489 Mich 373; 802 NW2d 239 (2011). Courts have consistently held that the word "reside" includes both a physical presence and an accompanying intent to remain there on a long-term basis. As early as 1847, this Court emphasized the importance of this intent element. In *In re High*, 2

Doug 515 (Mich, 1847), this Court defined residence as "the place where a person has his true, fixed, permanent home [. . .] and to which, whenever he is absent, he has the intention of returning." *Id.* at 523 (Mich, 1847). More recently, in *Kubiak v Steen*, the Court of Appeals similarly stated, "the word 'reside' has two distinct meanings [. . .] and, in what is sometimes referred to as the strict, legal, or technical sense [. . .] the word 'reside' includes not only physical presence in a place, but also the accompanying intent of choosing that place as a permanent residence." 51 Mich App at 413. Finally, in *People v Dowdy*, this Court emphasized a similar definition: a residence is "the place where a person has his home [. . .] and to which he intends to return after going elsewhere for a longer or shorter time." *People v Dowdy*, 489 Mich at 385 (quoting *Hartzler v Radeka*, 265 Mich 451, 452; 251 NW2d 554 (1933)).

Michigan courts have also used the legal definition of "reside" when considering cases involving children. In these cases, courts have used the word "reside" to include both a physical presence in a home as well as an accompanying intent for a child to remain there on a long-term basis. For example, in *Weaver v Giffels*, the Court of Appeals emphasized the importance of this intent element in a custody case. *Weaver v Giffels*, 317 Mich App 671; 895 NW2d 555 (2016). Although the Court found that the child was staying more frequently at her

mother's home, the court noted that this fact alone was not enough to determine where the child resided. *Id.* at 673. Instead, the Court of Appeals reversed and remanded the case in order to determine where the parties intended for the child to permanently reside. *Id.* at 687. Further, the Court of Appeals even noted that this intent element was "equally important—if not more" important than the child's physical presence when making this determination. *Id.* at 684.

The Court of Appeals has defined "reside" similarly in guardianship proceedings. When looking at MCL 700.5204(2)(b), the provision at issue in this case, the Court of Appeals has noted that "the plain language of the statute states that if parents permit their child to *permanently* reside with someone else when the guardianship issue arises, the court may appoint a guardian for the child." *Deschaine v St Germain*, 256 Mich App 665, 669-670; 671 NW2d 79 (2003) (emphasis added).

The definition of "reside" applied by the Court of Appeals also accords with the dictionary definition, which courts can turn to in order to determine a word's plain meaning. *Yoches v City of Dearborn*, 320 Mich App 461, 470; 904 NW2d 887 (2017); *Weaver v Giffels*, 317 Mich App at 678. According to Merriam Webster, "reside" means "to dwell permanently or continuously" or to "occupy a place as one's legal domicile." See Merriam-webster.com. Similarly, according to

Dictionary.com, "reside" means "to dwell permanently or for a considerable time." See Dictionary.com. Both definitions use the term "permanently" and, therefore, allude to the intent element consistently used by this Court and the Court of Appeals. Thus, it is not enough to temporarily live, visit, or vacation somewhere. The statutory obligation under MCL 700.5204(2)(b) requires children to *permanently* reside away from the parent before a guardianship may be established.

In this case, the trial court erred because Ms. Orta never intended for the children to permanently reside with Mrs. Keeney and, therefore, the requirements for establishing a guardianship were not satisfied. In June 2015, Ms. Orta dropped the children off for summer vacation with their grandmother. 9/25/18 Tr. at 29. With her, Ms. Orta brought enough supplies to last a month. 10/15/15 Tr. at 18. And although Ms. Orta offered to provide financial assistance, Mrs. Keeney refused her offer. *Id.* at 19. Both Mrs. Keeney and Ms. Orta agreed to this temporary, one-month arrangement while Ms. Orta worked to save money to buy an apartment. *In re Orta*, unpub op. Both Ms. Orta's employer and childhood friend corroborated that this was a temporary arrangement. Letter from Employer dated 10/14/15 at 1; 9/25/18 Tr. at 74. Ms. Orta also gave her mother authority to consent for medical treatment of the children and provided her contact number. Mother's Consent Letter dated 6/9/15.

After one month had passed, Ms. Orta and Mrs. Keeney had a phone conversation about continuing the temporary arrangement for a short time period. 10/15/15 Tr. at 19. According to Ms. Orta, the "kids were happy," Mrs. Keeney "didn't mind helping out," and Ms. Orta was still working to save for a two-bedroom apartment. *Id.* Therefore, Mrs. Keeney and Ms. Orta agreed that Leilani and Marques would stay with their grandmother just until Ms. Orta "was able to get into [her] apartment." *Id.*

Even though Ms. Orta and Mrs. Keeney had agreed upon this temporary arrangement, Mrs. Keeney nevertheless went to court and filed a guardianship petition a few weeks after the conversation. *In re Orta*, unpub op at 2. Mrs. Keeney did so without telling Ms. Orta of the petition, even though Ms. Orta had driven seven hours to visit her children over Labor Day weekend just days before. 10/15/15 Tr. at 20. And despite having her daughter's phone number, Mrs. Keeney never contacted or even attempted to contact Ms. Orta about the guardianship. 9/26/18 Tr. at 36-37. Ms. Orta only became aware of the guardianship proceedings three weeks after it was filed. 10/15/15 Tr. at 46.

On the same day Mrs. Keeney filed for guardianship and before Ms. Orta even had notice of the proceeding, the trial court immediately granted Mrs. Keeney a temporary guardianship. *In re Orta*, unpub op

at 2. Four weeks later, Ms. Orta appeared at the guardianship hearing without an attorney. 10/15/15 Tr. at 3. There, she explained to the court that she had already signed a one-year lease for a two-bedroom apartment; had consistently worked at Narconon Freedom Center, an addiction treatment center in Albion, Michigan and had recently received a promotion and a pay increase; and was financially stable and had access to reliable transportation through work. *Id.* at 4-6, 20, 30. Ms. Orta also explained the temporary nature of the arrangement she had made for her children with her mother and clarified that she had kept in touch with her mother after the original one month had passed. *Id.* at 19. No party alleged that the arrangement was intended to be long-term.

Still, the court granted Mrs. Keeney full guardianship of the children noting that Mrs. Keeney was financially "in a better position. . . than the mother has been." *Id.* at 63. The court noted that it wished to see "a longer pattern of stability in the workplace and living arrangement" before returning the children home. *Id.* at 63, 65.

According to all involved parties, the children were only temporarily residing with Mrs. Keeney. *In re Orta*, unpub op at 5. Although the original one-month arrangement had been extended, Ms. Orta was working towards buying a two-bedroom apartment and remained in contact with Mrs. Keeney about her progress. 10/15/15 Tr.

at 19. Since this arrangement was short-term in nature, and since the trial court was made aware of the arrangement's temporary nature, the Court of Appeals correctly held that the children were not "residing" there, as required under MCL 700.5204(2)(b). Thus, the Court of Appeals correctly found that the trial court erred in establishing the guardianship.

CONCLUSION

For these reasons, Ms. Orta respectfully requests that this Court deny the Application for Leave to Appeal.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH AO 2019-6

There are 5,648 countable words in Respondent-Appellee's Brief in Response to Petitioner-Appellant's Application for Leave to Appeal. The font is 12 point Century Schoolbook.

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